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No. 32

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

DEAN RUSK, Secretary of State, *Appellant*

v.

JOSEPH HENRY COBB, *Appellee*

BRIEF FOR ANGELIKA SCHNEIDER AS AMICUS CURIAE

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TABLE OF CONTENTS

	Page
Introductory Statement	1
Argument	6
I. Section 360 of the Immigration and Nationality Act of 1952 Does Not Preclude a Declaratory Judgment Suit To Establish Citizenship of Plaintiffs Not Resident in the United States	6
A. The Factual Consequences of the Government Position in Mrs. Schneider's Case	7
B. Miscellaneous Legal Contentions	11
II. The Power of Congress to Expatriate Citizens Is Limited to Acts Rationally Connoting Lack of Allegiance to the United States and Allegiance to Another Country	13
Conclusion	20

TABLE OF CASES

D'Argento v. Dulles, 113 F. Supp. 933	11
Dean Milk Co. v. City of Madison, 340 U.S. 349	17
Flemming v. Nestor, 363 U.S. 603	12
Frank v. Rogers, 253 F. 2d 889	11
Grauert v. Dulles, 133 F. Supp. 836, 239 F. 2d 60	11
Guerrieri v. Herter, 186 F. Supp. 588	11
Ju Toy v. United States, 498 U.S. 253	11, 12
Kennedy v. Mendoza-Martinez, this Term, No. 19	2, 6
Luria v. United States, 231 U.S. 9	18
Osborn v. The Bank of the United States, 22 U.S. 738	18
Perez v. Brownell, 356 U.S. 44	14, 16
Perkins v. Elg, 307 U.S. 325	12
Schneider v. Rusk, Court of Appeals for the District of Columbia Circuit, No. 15,959	2
Schneider v. Herter, District Court for the District of Columbia, decided August 17, 1960	11
Stewart v. Dulles, 248 F. 2d 602	12
United States v. Gay, 264 U.S. 353	12
Wong Fon Haw v. Dulles, 114 F. Supp. 906	9

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v.

JOSEPH HENRY CORT, *Appellee*

BRIEF FOR ANGELIKA SCHNEIDER AS AMICUS CURIAE

INTRODUCTORY STATEMENT

Angelika Schneider as *amicus curiae* presents this brief in support of the following propositions:

1. That a person residing abroad who admittedly at one time was a citizen of the United States may bring a declaratory judgment suit to establish his continued citizenship, and that Sections 360 (b) and (c) of the Immigration and Nationality Act of 1952 do not bar or limit this right.

2. That the authority of Congress to decree expatriation of citizens under the foreign affairs power does not apply to acts such as residence abroad for purposes which do not show either allegiance to an-

other country, or lack of allegiance to the United States.

These propositions are involved in litigation brought by Mrs. Schneider to establish her citizenship and now pending in the United States Court of Appeals for the District of Columbia Circuit. *Schneider v. Rusk*, No. 15,959.

In substance this brief supports the position of the appellee Cort with respect to the availability to him of the remedy of suit for declaratory judgment, which is the same remedy amicus Schneider has sought in her own litigation.

This brief takes no position as to the constitutional validity or invalidity of the statute involved before this Court in the *Cort* case and the *Mendoza-Martinez* case (No. 19), which expatriates those leaving the country to avoid military service. Amicus is not concerned with the issue in those cases in so far as it may hinge upon the war powers of the Congress, nor in the application of the foreign affairs power except to the extent that it may affect her own case. In order to show amicus' interest in the present litigation and its possible effect on her, it is necessary to set forth the facts of her case now pending in the Court of Appeals and the status of that case.

Facts of the Schneider Case

Angelika Schneider (nee Schaffer) was born in Germany in 1934 and was at birth a national of Germany. Before her fifth birthday, she was brought to the United States by her family. She became a United States citizen by derivative naturalization in 1950, through the naturalization of her mother. The decree

of naturalization was issued in the United States District Court for the Southern District of New York.

She lived in the United States continuously from 1939 to 1954—from age five to age twenty. She was educated at grade school at Croton-on-Hudson, New York; in high school at Cornwall-on-Hudson, New York, and Flushing, Queens, New York, and at Smith College in Northampton, Massachusetts, where she was graduated in 1954 with the degree of Bachelor of Arts. Thereafter, she studied at the University of Berne in Switzerland from 1954 to 1955 on a scholarship given by the Institute of International Relations in New York, and in the following year was a full-time student at the Sorbonne in Paris. She returned to the United States in April 1956, took up residence in Nutley, New Jersey and was employed in New York City.

While studying in Paris, she became engaged to Dr. Dieter Schneider, a German citizen and attorney at law practicing at Cologne, Germany. On June 6, 1956, she left the United States to marry Dr. Schneider. They were married in Cologne on July 4, 1956, and Mrs. Schneider has since lived continuously in Cologne with her husband except for one six-week family visit to the United States in 1957 and a one month trip with her husband in 1960.

In Germany there were born to Mrs. Schneider and her husband three children. Each of the first two was at the time of birth, and is now, a citizen of the United States duly registered as such at the United States Consulate. The citizenship of the third, born after Mrs. Schneider's citizenship was revoked and after commencement of Mrs. Schneider's action, is dependent on the outcome of the suit.

Mrs. Schneider feels herself to be an American. She feels no political connection with Germany or its government and has no political loyalty or allegiance to that country. Although she could acquire German citizenship because of her marriage to a German citizen, she has not done so. She desires both to continue to be an American citizen and to remain with her husband and children in Germany where her husband practices his profession.

During all of the time of her residence in Germany until June 1959, Mrs. Schneider was in possession of a valid United States passport. This passport was amended at the times of the births of her first two children to include them. On or about August 21, 1959, the United States Consulate at Duesseldorf, Germany, contending that she had lost her citizenship, deleted from her passport her name and crossed out her picture. The passport was returned to her as valid only in the names of her two sons.

In September 1959, Mrs. Schneider was requested by the American Consulate to surrender her naturalization certificate. She complied with this request under protest, specifically denying the contention that she had forfeited her United States citizenship.

Mrs. Schneider was subsequently served with a "Certificate of Loss of Nationality of the United States" sent to her from the United States Consulate General at Duesseldorf. The accompanying letter stated that the Department of State on September 25, 1959, had determined that she had lost her American citizenship pursuant to Section 352(a)(1) of the Immigration and Nationality Act of 1952 which states that a naturalized citizen of the United States shall lose his citizenship by having a continuous residence

for three years in a foreign state of which he was formerly a national.

Under German law Mrs. Schneider was entitled to remain with her husband so long as she had an American passport. When the passport was taken from her she was subject to expulsion from Germany. She has been able to obtain a temporary residence permit, subject to withdrawal at any time, which permits her to remain with her husband despite her lack of an American passport. Further, in connection with travel (such as her visit to the United States in 1960), she has been required to travel on papers which identify her as a stateless person.

After exhausting her State Department remedies, Mrs. Schneider filed suit in the United States District Court for the District of Columbia. She alleged jurisdiction under the general jurisdictional statute of the District of Columbia, D. C. Code §§ 11-305 and 11-306, the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and Section 10 of the Administrative Procedure Act, 5 U.S.C. § 1009. She alleged that the statute on which her expatriation was based was invalid because (a) it was without foundation in any power of Congress under the Constitution, (b) it unlawfully discriminated between naturalized and native-born citizens, in violation of the Due Process Clause of the Fifth Amendment, and (c) it imposed cruel and unusual punishment in violation of the Eighth Amendment.

The government moved to dismiss for lack of jurisdiction, advancing the same arguments made in *Cort* here. The District Court denied the motion to dismiss, but granted a subsequent motion for summary judgment on the merits.

Both parties appealed to the Court of Appeals for the District of Columbia Circuit. After briefs and argument, however, that court *sua sponte* announced that it would postpone decision pending decision of this Court in the *Cort* case. Mrs. Schneider then sought certiorari in this Court before judgment by the Court of Appeals. The Government opposition suggested that Mrs. Schneider's interest could be protected adequately by a brief amicus curiae on the jurisdictional point in *Cort*. Certiorari was denied June 19, 1961. As indicated above, this brief discusses not only the jurisdictional point common to Mrs. Schneider's case and *Cort*, but also the constitutional argument on the foreign affairs power to the limited extent that this question is believed to be similar to the questions in the *Cort* and *Mendoza* cases.

ARGUMENT

I. SECTION 360 OF THE IMMIGRATION AND NATIONALITY ACT OF 1952 DOES NOT PRECLUDE A DECLARATORY JUDGMENT SUIT TO ESTABLISH CITIZENSHIP OF PLAINTIFFS NOT RESIDENT IN THE UNITED STATES.

This issue is the same as that presented in the *Cort* case. We understand from counsel that the briefs of appellee Cort and of the *amicus* American Civil Liberties Union will cover many of the arguments made by Mrs. Schneider in the courts below. We shall therefore not repeat those arguments but merely state our agreement

(1) that the provisions of the District of Columbia Code, the Declaratory Judgment Act, and the Administrative Procedure Act mentioned above provide adequate jurisdiction in the District Court to entertain the instant action, and

(2) that the legislative history of Section 360 (b) and (c) shows it was intended to be an additional

remedy for citizenship claimants and not a limitation on the existing remedies.

We believe we can best assist the Court by showing that the practical effect of the Government's contention is to deny any relief and to immunize unconstitutional legislation from review in the courts.

A. The Factual Consequences of the Government Position in Mrs. Schneider's Case

Mrs. Schneider is married to a Germany attorney resident in Cologne. She resides in Germany with her husband and her three infant children in accordance with both her own wishes and her legal duty. For this reason she does not at present desire to live permanently in the United States. She desires to preserve her United States citizenship, because her allegiance is to the United States exclusively and to no other country. Although she has visited the United States for longer periods both before and after this litigation was commenced, she can come only for visits since her husband and infant children reside in Germany where her husband practices. When the Secretary of State deprived her of her passport and issued her a Certificate of Loss of Nationality, she brought suit against him challenging the legality of the statute under which he acted. The Government says she cannot do this, although it is the simple and obvious way of presenting the issue. Instead, according to the Government's view, she must accept imposition on her of an alien's status and enter into concededly "time consuming and financially burdensome" (Brief for Appellant, pp. 38-39) series of procedures consisting in substance of picking an artificial quarrel with the Attorney General who has taken no action against

her. Besides being nonsensically complex the suggestion is practically impossible.

Examination of what it means in practice will show that the supposed exclusive remedy is no remedy at all. The Government says plaintiff must take the following procedures, which are outlined in part in the State Department Rules, 22 C.F.R. § 50.24 et seq.

(i) She must seek from her consular officer and the Secretary of State a certificate of identity to entitle her to come to the United States for purposes of admission. To do this she must establish to his satisfaction not only that her claim is honestly made but also that it has a "substantial basis". § 50.24(c), § 50.31. Under the rules as they exist Mrs. Schneider must be denied a Certificate of Identity because the rules provide (in Section 50.31 defining the meaning of "substantial basis"), "A substantial basis may not be deemed to exist where a Court of the United States has held that the person concerned is not an American national." In the light of the District Court's decision in Mrs. Schneider's case this would seem to preclude the issuance of a certificate even if the Secretary himself were of the opinion that the issue is substantial. If the Secretary were free to waive this rule, there is no assurance or even likelihood that he would do so. It was the Secretary, through his counsel, who, before the District Court's decision on the merits, successfully urged in that court that Mrs. Schneider's case did not present a substantial constitutional question (thus avoiding the appointment of a three judge district court).

(ii) Mrs. Schneider might, of course, seek judicial review of the refusal to issue the certificate. But here she would be blocked again. The Government has in

previous cases successfully contended that the issuance or refusal of a certificate of identity is a discretionary matter and that there is no right to review of such a refusal in the courts. See *Wong Yee Hang v. Dulles*, 144 F. Supp. 906 (S.D.N.Y. 1956). This would be the end of the road; the Government's view of Section 360 would bar all possibility of her securing court review of the withdrawal of her citizenship.

(iii) If by some unforeseen path Mrs. Schneider could secure the certificate of identity, she must then, says the Government, leave her husband and infant children in Germany and seek admission to the United States. She must say that she "desires to proceed to a port of entry and apply for admission to the United States" (§ 50.2) although this is not the fact. Thus, she must abandon her family, in violation of her obligations as wife and mother. Plainly this is something that she cannot do. It is a burden no Congress can be held to have intended.

(iv) If she should in fact go to the United States there would be further obstacles. Assuming no further impossible requirements (such as the making of a statement of intention to remain permanently in the United States, normally demanded on admission), she must go through all administrative proceedings necessary to obtain a final ruling by the Attorney General that he agrees with the Secretary of State that she has lost her citizenship under the statute. During these proceedings, she may be free to remain in theoretical detention, although presumably she would be released on bond. We need not detail how lengthy these proceedings may be, nor the number of procedural pitfalls which may beset her before a final decision.

(v) After these delays she must then sue the Attorney General's representative in a habeas corpus action. During this proceeding and all subsequent appeals she would have to remain in the United States, away from her husband and children, for unless she is in the custody of the Attorney General she has no right to habeas corpus.

Mere consideration of these facts shows that the Section 360 procedure is not only not the appropriate remedy, it is not an available remedy at all. It requires Mrs. Schneider, in order to establish her status as a citizen, to obtain consent to be sued from the Government she wants to sue. It requires her to come to the United States when it is impossible for her to come to the United States at this time. And it imposes other tremendous personal and financial burdens which make the remedy impossible.

This picture of the difficulties in proceeding under Section 360 (b) and (c) is in sharp contrast with the Government's concession in its brief in the *Mendoza* case (pp. 51-52) that a person being deprived of his citizenship is entitled to access to the Courts. Mrs. Schneider received her citizenship by virtue of a U. S. court decree in solemn naturalization proceedings. Yet the Government now claims it can be taken away from her by administrative decision not reviewable in the Courts except under impossible conditions.

We submit that, if Section 360 (b) and (c) is construed as exclusive, it is nothing more than an unconstitutional attempt to prevent Mrs. Schneider from establishing her status by regular process of the courts of the United States. Congress did not intend the section to impose any such burden, and it cannot

properly be so construed. It must be construed as an alternative remedy of assistance to certain litigants, not an obstacle to access to the courts.[1]

B. Miscellaneous Legal Contentions

There are some assertions presented by the Government brief which we are not certain will be treated by the other submissions before this Court. We mention them briefly.

a. The Government says as the admitted premise for its argument regarding the exclusiveness of Section 360 (b) and (c) (Brief for Appellant, p. 24), that *Shaughnessy v. United States*, 198 U.S. 253, and cases following it, establish that even before Section 360 and its predecessor persons abroad could test their citizenship only in exclusion proceedings. The case does not stand for this broad assumption. The court was there concerned with a person actively seeking entry who, on exclusion and detention at the port of entry, sought habeas corpus as the only mode of review open to him. The Court was concerned solely with the constitutional question of the scope of review required in the habeas corpus proceeding. It in no way passed on the statutory question of the availability of other methods of review to citizenship claimants in other circumstances.

[1] The courts of the District of Columbia, as admitted (Brief for Appellee, p. 28), have with one exception repeatedly applied this construction. *Ford v. Peters*, 253 F. 2d 550 (1958); *Guerrieri v. Herter*, 181 F. Supp. 388; *Schneider v. Herter*, decided August 17, 1960 (on appeal to the Court of Appeals); *Leonard v. Dulles*, 137 F. Supp. 939, aff'd 239 F. 2d 60, *cert. denied* 351 U.S. 917. A third judge in that district, in an opinion, *D'Amico v. Dulles*, 113 F. Supp. 933, held otherwise, but was not followed in the later cases.

Subsequent to *Ju Toy* a variety of decisions demonstrate that the mere fact of a plaintiff's presence abroad does not deprive him of access to the U. S. courts. *E.g.*, in *United States* v. *Gay*, 264 U.S. 353 (1924), a person resident in Switzerland was permitted to establish his claim to citizenship by a suit in the Court of Claims. In *Stewart* v. *Dulles*, 248 F.2d 602 (D.C. Cir. 1957), a citizen resident in England sued the Secretary of State to establish his right to a passport. *Perkins* v. *Elg*, 307 U.S. 325 (1939), holding that the conventional jurisdiction provisions permitted a suit to establish citizenship, contained no indication that jurisdiction depended on the plaintiff's presence in this country.[2]

b. The Government, in seeking "a rational basis" (Brief p. 39) for its view that Immigration Service administrative proceedings are desirable and necessary in addition to State Department administrative proceedings as a preliminary to Court action, suggests that the facilities of the Immigration and Naturalization Service are of a superior character (Brief for Appellant; pp. 39-43). It must be pointed out, however, that there is no evidence whatever cited to indicate that the argument as to the assumed superiority of the Immigration Service and its procedures was ever made to, much less accepted by, the Congress which adopted Section 360.[3]

[2] Cf. *Flemming v. Nestor*, 363 U.S. 603 (1960), in which a person residing abroad was permitted to sue under 42 U.S.C. § 405 (g) to assert his claim that deprivation of his social security rights was unconstitutional.

[3] Indeed the suggestion appears to be of rather recent vintage since it was not even mentioned in the briefs below in the *Schneider* case.

II. THE POWER OF CONGRESS TO EXPATRIATE CITIZENS IS LIMITED TO ACTS RATIONALLY CONNOTING LACK OF ALLEGIANCE TO THE UNITED STATES AND ALLEGIANCE TO ANOTHER COUNTRY.

On the merits, the question in which amicus curiae is interested is the extent to which Congress, in the exercise of its foreign affairs power, may provide for the loss of American citizenship.

As indicated above, amicus is not concerned with the questions in *Cort* and *Mendoza Martinez* insofar as justification for the statutes there involved is sought by reference to the war power.

Further, amicus is not concerned with the application of the particular statute involved in *Cort* or in the particular facts of the case. The interest of amicus is limited to the scope this Court may accord to the foreign affairs power as a justification for the withdrawal of citizenship.

A. Mrs. Schneider is being deprived of her rights of citizenship on the basis of Section 352 (a)(1) of the Immigration and Nationality Act of 1952, which provides for the automatic withdrawal of the citizenship of naturalized citizens who reside in the country of their former nationality for a period of three years. The government seeks to justify Section 352 (a)(1), just as it here attempts to justify Section 349 (a)(10) of the Act, as a proper exercise of the foreign affairs power. A consideration of the facts involved in the *Schneider* case will, we feel, assist the court in defining more closely the limits of the authority of Congress under its foreign affairs power to provide for withdrawal of citizenship.

Amicus respectfully submits that any disposition this Court makes of the foreign affairs power argument in the cases pending before it should apply the principle

that the foreign affairs power authorizes Congress to expatriate only for actions rationally deemed to connote lack of allegiance to the United States and allegiance to another country. We suggest this to be the proper construction of the opinion of this Court in *Perez* v. *Brownell*, 356 U.S. 44, as indicated by the language of the Court at page 60:

> "... Moreover the fact is not without significance that Congress has interpreted this conduct [voting in a foreign election], not irrationally, as importing not only something less that complete and unswerving allegiance to the United States but also elements of an allegiance to another country in some measure, at least, inconsistent with American citizenship."[4]

The question whether Congress is dealing with conduct that may be regarded as importing something less than complete and unswerving allegiance to the United States and elements of allegiance to the government of another country is thus concededly significant, and we suggest controlling. If it cannot be said that the act in question rationally may be regarded as indicating allegiance to another country or as at least "compromising" allegiance to the United States it would seem clear that Congress has no power to remove citizenship.[5]

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[4] Cf. the comment of the Chief Justice dissenting. "The citizen may elect to renounce his citizenship and under some circumstances he may be found to have abandoned his status by voluntarily performing acts that compromise his undivided allegiance to his country."

[5] It is perhaps in recognition of the possibility that this position may be accepted that the Government argues (p. 73) that Dr. Cort showed that "he did not consider himself bound to his obligations as a United States national."

An examination of the facts in Mrs. Schneider's case recited above establishes that the mere act of residence abroad is at most a neutral fact not rationally susceptible of construction as importing "less than complete and unswerving allegiance to the United States." Residence abroad in Mrs. Schneider's case "for purposes of marriage and family" is not in any way inconsistent with her allegiance to the government of the United States. Indeed, congressional action itself recognizes this fact, because it has not sought to draw any such inference in the case of born rather than naturalized citizens who marry and live abroad. Also, Mrs. Schneider's conduct, as established by the record in her case, establishes to the contrary an "unswerving allegiance to the United States." She has refused to accept German nationality, which would have been easy for her to obtain, and instead has insisted upon her American citizenship even at the risk of being expelled from Germany as a stateless person and separated from her husband and infant children.[6] The only act committed by Mrs. Schneider is that of residing abroad for the purpose of living together with her family. The legislative power, we think, cannot impose loss of the fundamental right of citizenship on this natural consequence of, and duty resulting from, marriage.

Whatever may be the conclusion which this Court reaches with respect to persons residing abroad for purposes of evading the draft, we ask that the holding of the Court with respect to the foreign-affairs power

[6] She has of course accepted, as forced upon her by her government, the onerous position of a stateless person, and in connection with her visit to the United States while this litigation was pending, has come here on papers describing her as stateless.

of Congress be so limited as not to include within its sweep born or naturalized citizens who, like Mrs. Schneider, reside abroad for purposes fully consistent with their continued allegiance to the United States.

B. There appear indications in the government's brief that independently of the question of allegiance there may be other grounds for the exercise of the congressional foreign affairs power over citizenship.

Thus the government, in its brief in *Mendoza* (p. 41) speaks of the possibility of frictions which may be created between the government of the United States and foreign governments as a result of the presence of draft evaders in a foreign country. We express no opinion on the subject of the nature and extent of the frictions which may arise in such case, or what is appropriately to be done. We wish only to point out that the possibility of "friction" does not automatically create congressional power of an unlimited extent.

Whenever a citizen of the United States travels in a foreign country there is always a possibility that there may be just or unjust complaints about his activities in that country. In this sense there is possible friction in every movement or residence of citizens of the United States (whether born or naturalized) outside the borders of the United States. This does not, however, authorize Congress in its discretion to expatriate all citizens of the United States who wish to travel or reside abroad. This court in *Perez*, in emphasizing the need for a rational nexus between the supposed evil and the remedy, requires the most careful consideration as to whether the kinds of possible frictions which are feared are so great that they may be remedied by no means other than the drastic one of disowning the

citizen and depriving him of that which may make life most precious.

Many lesser remedies are available. We cite a few. Congress is undoubtedly free, when it has good reason to do so, to reduce the measure of protection afforded citizens residing abroad. Such situations occur at present, for example, when the United States withdraws its representative from a foreign nation in which United States citizens are residing. Where the mere presence of United States citizens might be harmful to foreign relations, the government might restrict travel in certain areas. But when travel is permitted, the difficulty of affording protection to a citizen in a foreign country cannot warrant revoking his every political right outside that country—including, indeed, his right to return home. In view of the obvious alternatives, the harsh course provided by Section 352(a)(1) plainly exceeds the power of Congress. Cf. *Dean Milk Co.* v. *City of Madison*, 340 U.S. 349 (1951).

Perez required that "the means—withdrawal of citizenship—must reasonably be related to the end—here the regulation of foreign affairs." Certainly in the case of Mrs. Schneider no such rational nexus exists.

It is suggested that residence of persons abroad for purposes of evading military service will create friction with foreign countries of so great a character as to warrant the extreme remedy of denaturalization. Whether this be so or not, it is clear that mere residence abroad for family reasons does not create such frictions. The only friction that in fact occurred in Mrs. Schneider's case resulted from the removal of United States recognition of Mrs. Schneider's citizenship. It was only then that her peaceful residence abroad was disturbed

by the possibility of her expulsion from her residence with her husband and children because she was declared by her own Government to be stateless.[7]

In the light of the drastic consequences of expatriation, namely statelessness and all it implies, it is clear that Congress must seek some less drastic remedy if it should find that substantial frictions with foreign governments may in certain cases result from residence of citizens abroad. Particularly is this so where the regulation is applied only to naturalized citizens. For a decision upholding Section 352(a)(1) would mark the first substantive exception from the deeply rooted principle that native-born and naturalized citizens are equal in every respect (with the single exception of the constitutional provision limiting the presidency to the natural born citizens). See *Luria* v. *United States*, 231 U.S. 9 (1913); *Osborn* v. *The Bank of the United States*, 22 U.S. 738, 827-828 (1824). The provision, now in Section 352(a)(1), which was originally enacted into law as Section 404 of the Nationality Act of 1940, 54 Stat. 1137, represents the *first* and *only* substantive discrimination between native-born and naturalized citizens in any act of Congress.

Two possibilities need to be excluded as inapplicable in the present case: (1) that real and dangerous frictions may result from the residence abroad of dual nationals, born or naturalized, so that in some cases

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[7] The Draft Convention on the Elimination of the Stateless and on the Reduction of Statelessness, formulated in 1953 by the International Law Commission (U.N. Doc. A/2693, p. 119) states in its Preamble that "... Statelessness is frequently productive of friction between states." As one means of eliminating such friction the Draft provides that residence abroad shall not be a ground for denaturalization.

expatriation may be the only solution, and, (2) that in some cases people may come to the United States only for the purpose of obtaining American citizenship in bad faith, and once having obtained that citizenship leave the country to return to their original home.

Both of these possibilities are inapplicable on the facts of the *Schneider* case, and both are adequately provided for by statute other than 352(a)(1), involved in the *Schneider* case. Mrs. Schneider is not a dual national. She is a citizen only of the United States. And the government has not suggested, and there is no basis for the suggestion, that when in 1930 as a freshman at Smith College, Angelika Schaffer was naturalized by the United States District Court for the Southern District of New York, it was not a good faith naturalization.*

Furthermore, the statutes deal effectively with these two possibilities. Section 350 of the Nationality Act spells out when certain dual nationals lose their American citizenship through residence in the state of their other nationality. Section 340 (d) of the Act deals with bad faith naturalization by a five year rebuttable presumption in case of return to the country of origin.

Plainly the residence abroad of United States citizens is almost as normal as their travel abroad. This is evidenced by the great numbers so involved. Figures maintained by the State Department show that as of March 31, 1959 there were 610,968 United States citizens and their dependents residing abroad, of which 91,833 were government personnel and 519,135 were not employed by or in the government. The largest

* The record shows that she did not meet Dr. Schneider, her husband to be, until several years later.

number of U. S. citizens are in Canada—204,354, of whom almost all are non-government. In Germany, the figures are 28,613 American residents, 15,795 being in government employ. American citizens now reside in 136 countries. The figures are not broken down by the State Department between naturalized and native-born citizens.

The mere numbers of such residents and the fact that the State Department figures do not make any distinction between born and naturalized citizens residing abroad is an indication that residence abroad is not a ground of substantial friction, whether the citizens in question be born or naturalized.

A remedy of statelessness imposed for mere residence abroad for family reasons is unreasonable under the rule of the *Perez* case, and beyond the powers of Congress.

CONCLUSION

For the reasons stated,

1. The decision of the lower court in the *Cort* case, holding that it had jurisdiction, should be affirmed.

2. The decision of this Court on the merits, if based on the Foreign Affairs power, should preserve the principle that foreign affairs power permits expatriation only for actions rationally deemed to connote lack of allegiance to the United States and allegiance to

another country, and in any event not for mere residence abroad, without more.

Respectfully submitted,

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